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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 CALVIN S. SECREST, ) CASE NO. CV 17-4061-RGK (PJW)  
11 )  
12 ) Petitioner, )  
13 ) [PROPOSED] ORDER DISMISSING  
14 ) SECOND OR SUCCESSIVE HABEAS CORPUS  
15 ) PETITION AND DENYING CERTIFICATE  
16 ) OF APPEALABILITY  
17 )  
18 ) v. )  
19 ) S. HATTON, WARDEN, )  
20 ) Respondent. )  
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16 Before the Court is Petitioner's latest attempt to challenge his  
17 February 2002 sentence, following his conviction in Los Angeles County  
18 Superior Court for first degree robbery, possession of a gun, and  
19 evasion of police. (Petition at 2.) This is the fourth time that  
20 Petitioner has attempted to challenge his sentence in this court. His  
21 first petition in 2009 was dismissed as untimely. (*Secrest v. Kramer*,  
22 CV 09-2291-RGK (JWJ), July 8, 2009 Order Accepting Report and  
23 Recommendation of United States Magistrate Judge.) Petitioner then  
24 attempted to appeal the Court's ruling, but his application for a  
25 certificate of appealability was denied. (*Secrest v. Kramer*, CCA No.  
26 09-56300, February 28, 2011 Order.) His second and third petitions in  
27 June 2012 and May 2014 were dismissed as unauthorized second or  
28 successive petitions. (*Secrest v. Brazelton*, CV 12-4901-RGK (PJW),

1 June 18, 2012 Order; *Secrest v. Sherman*, CV 14-3948-RGK (PJW), May 29,  
2 2014 Order.) The instant Petition must be dismissed for the same  
3 reason.

4 A petition that is dismissed for untimeliness "presents a  
5 'permanent and incurable' bar to federal review of the underlying  
6 claims" and renders a subsequent petition second or successive.  
7 *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009). Absent an order  
8 from the Ninth Circuit, Petitioner may not bring a habeas petition  
9 challenging his February 2002 sentence in this court. See 28 U.S.C.  
10 § 2244; see also *Burton v. Stewart*, 549 U.S. 147, 157 (2007) (holding  
11 district court lacks jurisdiction to consider the merits of a second  
12 or successive petition absent prior authorization from the circuit  
13 court).

14 Further, because Petitioner has not made a substantial showing of  
15 the denial of a constitutional right or that the court erred in its  
16 ruling, Petitioner is not entitled to a certificate of appealability.  
17 See 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b); *Miller-El v.*  
18 *Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473,  
19 484 (2000).

20 IT IS SO ORDERED.

21 DATED: June 6, 2017



22  
23 R. GARY KLAUSNER  
UNITED STATES DISTRICT JUDGE

24 Presented by:

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27 PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE

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